

1 TEAGUE P. PATERSON, SBN 226659  
2 VISHTASP M. SOROUSHIAN, SBN 278895  
3 BEESON, TAYER & BODINE, APC  
4 483 Ninth Street, 2nd Floor  
5 Oakland, CA 94607  
6 Telephone: (510) 625-9700  
7 Facsimile: (510) 625-8275  
8 Email: vsoroushian@beesontayer.com

9 Attorneys for Plaintiff  
10 American Federation of State, County & Municipal Employees Local 101

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SANTA CLARA**  
**AT SAN JOSÉ**

SAN JOSE POLICE OFFICERS'  
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSÉ, BOARD OF  
ADMINISTRATION FOR POLICE AND FIRE  
DEPARTMENT RETIREMENT PLAN OF  
CITY OF SAN JOSE, and DOES 1-10,  
inclusive,  
Defendants.

AND RELATED CROSS-COMPLAINT AND  
CONSOLIDATED ACTIONS

Consolidated Case No. 1-12-CV-225926

[Consolidated with Case Nos. 1-12-CV-225928,  
1-12-CV-226570, 1-12-CV-226574,  
1-12-CV-227864, and 1-12-CV-233660]

Assigned For All Purposes To:  
Judge Patricia Lucas  
Department 2

**AFSCME LOCAL 101'S OBJECTIONS TO  
EVIDENCE SUBMITTED BY DEFENDANT  
CITY OF SAN JOSÉ IN SUPPORT OF  
OPPOSITION TO SUPPLEMENTAL  
MOTION TO ATTORNEYS' FEES**

Hearing Date: December 16, 2014  
Hearing Time: 9:00 a.m.  
Courtroom: 2  
Judge: Honorable Patricia Lucas  
Action Filed: June 6, 2012  
Trial Date: July 22, 2013

Plaintiff American Federation of State, County and Municipal Employees, Local 101  
("AFSCME") herein objects to the declarations and exhibits submitted by Defendant City of San José  
("City") in support of its Opposition to AFSCME's Supplemental Motion for Attorneys' Fees. The  
City submitted a Declaration of Linda Ross, which included various accompanying exhibits.  
AFSCME's specific objections are set forth below.

1 **OBJECTIONS TO DECLARATION OF LINDA ROSS**

2 **OBJECTION NO. 1**

3 **(Ross Declaration)**

4 **Material Objected to:**

5 1. Exhibit B to Ross Declaration, page 1,  
6 paragraph 3 (objection is particularly with respect  
7 to Exh. B):

8 Exhibit B: City's rendition of select entries from  
9 AFSCME's billing records

10 (Paragraph 3 says: "We conducted a line by line  
11 review of the billing records submitted by  
12 Plaintiffs. In reviewing the billing records, we  
13 attempted to segregate (1) fees representing  
14 unreasonable amounts of time spent in litigating  
15 the case, including fees billed for excessive work,  
16 duplicative work, and unnecessary travel, (2) fees  
17 that were not properly supported, including  
18 vague or block billed entries, and (3) fees  
19 attributable to claims for relief on which  
20 Plaintiffs' were not successful. For each Plaintiff,  
21 we separately calculated the total fees for such  
22 work. We have organized the categories for each  
23 Plaintiff on Excel spreadsheets attached as  
24 Exhibits A, B, and C to this declaration.")

5 **Grounds for Objection:**

Hearsay (Evid. C. § 1200; *see also Aguimatang*  
*v. California State Lottery* (1991) 234  
Cal.App.3d 769, 799); Secondary Evidence  
(Evid. C. § 1521)

Exhibit B constitutes the City's inaccurate,  
incomplete rendition of AFSCME's billing  
records. Not only does the exhibit diverge from  
the chronological format of AFSCME's billing  
records, but it is also riddled with errors in its  
transcription of AFSCME's bills; it also mis-  
categorizes certain entries, as further discussed in  
the Soroushian Declaration (§§ 3-5) and Paterson  
Supplemental Declaration (§§ 7-13) submitted in  
support of AFSCME's reply in support of its  
supplemental motion for attorneys' fees. Said  
declarations are incorporated into these  
objections as if fully set forth herein.

Exhibit B--which contains inaccuracies, cherry-  
picks limited billing entries, eliminates the  
chronological ordering of AFSCME's billing  
records and creates artificial and often incorrect  
categories--is offered for the truth of its contents,  
and so it must be excluded as impermissible  
hearsay. The City's addition of "subject matter"  
labels to the table also constitutes hearsay.  
Finally, AFSCME's billing records are the best  
evidence of its work on this case.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**OBJECTION NO. 2**

**(Ross Declaration)**

**Material Objected to:**

2. Ross Declaration, page 6, paragraph 27:  
“AFSCME seeks a fee award of \$513,411.25 based on a blended rate of \$275 per hour for partners and associates. AFSCME states that the fee award already has been reduced by 15% for pstate court work and 30% for federal court work. However, unlike the SJPOA submission, the AFSCME submission does not show how the 15% state court work and 30% federal court work reduction was taken. The time records simply show total fees of \$510,111.25, to which AFSCME adds an estimated additional \$3,300 in fees for the remaining work on AFSCME’s attorneys fee motion. For this reason, the City will begin its analysis with the \$513,411 number, since there is no proof of any reduction.”

**Grounds for Objection:**

Improper Opinion Testimony (Evid. C. § 800-803), Lacks Foundation (Evid. C. §§ 402, 403, 702(a)); Secondary Evidence (Evid. C. § 1521)

AFSCME submitted Mr. Paterson’s sworn declaration, attesting to the reductions to the hours it worked. This (along with the actual billing records submitted) is the best evidence of the reductions and suffices as proof of such (*see Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587).

Resultantly, Ms. Ross’ statement that there is no proof of this reduction lacks any sort of foundation is nothing more than an opinion that ignores the facts set forth in Mr. Paterson’s declaration.

**OBJECTION NO. 3**

**(Ross Declaration)**

**Material Objected to:**

3. Exhibit L to Ross Declaration, pages 6-7, paragraph 29:  
Exhibit L: Order Denying Motion for Attorneys’ Fees in Federal Case

**Grounds for Objection:**

Irrelevant, Undue Prejudice (Evid. C. §§ 350-352)

Exhibit L is completely irrelevant. Not only was it an order on a motion to which AFSCME was not a moving party (which the City recognizes), but the City provides no authority as to how or why this fact has any bearing on AFSCME’s entitlement to fees on the work it performed with respect to the federal case. In fact, as the City recognizes, the SJPOA does not seek an award of attorneys’ fees for the work it performed on the federal case here.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**OBJECTION NO. 4**

**(Ross Declaration)**

**Material Objected to:**

4. Ross Declaration, pages 6-7, paragraph 29:

“**Federal case.** AFSCME is seeking 99.2 hours of work in connection with the Complaint for Declaratory Relief filed by the City in the United States District Court for the Northern District of California. (See Declaration of Teague Paterson, dated October 16, 2014, page 5) The City filed the federal Complaint in June 2012 and dismissed it without prejudice on October 1, 2012 to conserve resources by avoiding simultaneous federal and state court actions. Subsequently, the City filed its federal claims as a Cross Complaint in this action based on the stipulation of all parties. AFSCME did not file for attorney’s fees in the federal action. The SJPOA filed for attorney’s fees in the federal action but its motion was denied. Notably, the SJPOA, unlike AFSCME, is not seeking any fees in this case for its work in the federal action. Attached as Exhibits K and L, respectively, are true and correct copies of the City’s dismissal without prejudiced, dated October 1, 2012 and the order of the federal district court, dated September 9, 2013 denying the SJPOA fee motion. None of the time spent in the federal litigation should be allowed for a total subtraction of 99.2 hours.”

**Grounds for Objection:**

Insufficient Proof to Justify Requested Reduction  
(*Premier Med. Mngmt. Systems, Inc. v. Cal.*  
(2008) 163 Cal.App.4th 550, 564)

The City has neither attacked the itemized billings it places in this category with admissible evidence that the fees claimed were not appropriate nor has it obtained the declaration of an attorney with expertise in the procedural and substantive law to demonstrate that the fees claimed were unreasonable. Through her declaration, Ms. Ross does not claim that she is either.

**OBJECTION NO. 5**

**(Ross Declaration)**

**Material Objected to:**

5. Exhibit X to Ross Declaration, page 15, paragraph 72:

Exhibit X: declarations submitted by SJPOA in support of Motion for Temporary Restraining Order

**Grounds for Objection:**

Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a))

AFSCME was not a party to this particular motion and any representations made by non-AFSCME members are not relevant to AFSCME or its members. Any purported financial effect on non-AFSCME members is irrelevant to AFSCME. This evidence is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation.

**OBJECTION NO. 6**

**(Ross Declaration)**

**Material Objected to:**

6. Exhibit Y to Ross Declaration, page 15, paragraph 73:

Exhibit Y: copy of trial transcript re SJPOA opening statement

**Grounds for Objection:**

Irrelevant, Undue Prejudice (Evid. C. §§ 350-352)

Any purported financial effect on non-AFSCME members is irrelevant to AFSCME. Furthermore, words spoken during an opening argument do not constitute evidence and are irrelevant. This exhibit is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**OBJECTION NO. 7**

**(Ross Declaration)**

**Material Objected to:**

7. Exhibit S to Ross Declaration, page 14, paragraph 67:

Exhibit S: pages from SJ Police and Fire Dept. Retirement System OPEB Actuarial Valuation, dated June 30, 2012

**Grounds for Objection:**

Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a))

This document has nothing to do with AFSCME and is irrelevant to it. It is further irrelevant because it is dated after Measure B passed. This exhibit is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation.

Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it.

**OBJECTION NO. 8**

**(Ross Declaration)**

**Material Objected to:**

8. Exhibit T to Ross Declaration, page 14, paragraph 68:

Exhibit T: pages from SJ Federated System Retirement System OPEB Actuarial Valuation, dated June 30, 2012

**Grounds for Objection:**

Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a))

This document is irrelevant because it is dated after Measure B passed. It is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation.

Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**OBJECTION NO. 9**

**(Ross Declaration)**

**Material Objected to:**

9. Exhibit U to Ross Declaration, page 14, paragraph 69:  
  
Exhibit U: pages from SJ Police and Fire Dept. Retirement System CAFR for period ended June 30, 2013, dated June 30, 2012

**Grounds for Objection:**

Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a))

This document has nothing to do with AFSCME and is irrelevant to it. It is further irrelevant because it is dated after Measure B passed. This exhibit is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation.

Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it.

**OBJECTION NO. 10**

**(Ross Declaration)**

**Material Objected to:**

10. Exhibit V to Ross Declaration, page 14, paragraph 70:  
  
Exhibit V: pages from SJ Federated Retirement System CAFR for period ended June 30, 2013, dated June 30, 2012

**Grounds for Objection:**

Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a))

This document is irrelevant because it is dated after Measure B passed. It is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation.

Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**OBJECTION NO. 11**

**(Ross Declaration)**

<b>Material Objected to:</b>	<b>Grounds for Objection:</b>
11. Exhibit Q to Ross Declaration, page 14, paragraph 65:  Exhibit Q: pages from SJ Police and Fire Dept. System Actuarial Valuation, June 30, 2012 (dated Dec. 2012)	Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a))  This document has nothing to do with AFSCME and is irrelevant to it. It is further irrelevant because it is dated after Measure B passed. This exhibit is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation.  Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it.

**OBJECTION NO. 12**

**(Ross Declaration)**

<b>Material Objected to:</b>	<b>Grounds for Objection:</b>
12. Exhibit R to Ross Declaration, page 14, paragraph 65:  Exhibit Q: pages from SJ Federated System Actuarial Valuation, June 30, 2012 (dated Dec. 2012)	Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a))  This document is irrelevant because it is dated after Measure B passed. It is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation.  Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**OBJECTION NO. 13**

**(Ross Declaration)**

**Material Objected to:**

13. Exhibit W to Ross Declaration, page 15, paragraph 71:

Exhibit W: copy of Figone Memorandum to Mayor and City Council, re "Continued Suspension of SRBR"

**Grounds for Objection:**

Irrelevant, Undue Prejudice (Evid. C. §§ 350-352)

This document is irrelevant insofar as the City uses it to argue that AFSCME had a significant financial stake in the litigation since, again, the litigation did not lead to a tangible monetary award for AFSCME or its members. It is further worth noting that because the City was not distributing these funds (as the memo shows), none of it actually went to benefit AFSCME retirees.

Dated: December 4, 2014

BEESON, TAYER & BODINE, APC

By: 

VISHTASP M. SOROUSHIAN

Attorneys for AFSCME LOCAL 101

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

**SANTA CLARA COUNTY SUPERIOR COURT**

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

**AFSCME LOCAL 101'S OBJECTIONS TO EVIDENCE  
SUBMITTED BY DEFENDANT CITY OF SAN JOSÉ IN SUPPORT OF  
OPPOSITION TO SUPPLEMENTAL MOTION TO ATTORNEYS' FEES**

☒ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**SEE SERVICE LIST**

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, December 4, 2014.



Esther Aviva

**SERVICE LIST**

Greg McLean Adam, Esq.  
Jonathan Yank, Esq.  
Gonzalo C. Martinez, Esq.  
Amber L. Griffiths, Esq.  
CARROLL, BURDICK & McDONOUGH LLP  
44 Montgomery Street, Suite 400  
San Francisco, CA 94104  
jyank@cbmlaw.com  
agriffiths@cbmlaw.com  
jstoughton@cbmlaw.com  
gmartinez@cbmlaw.com

*Attorneys for Plaintiff, SAN JOSE POLICE  
OFFICERS' ASSOCIATION (Santa Clara  
Superior Court Case No. 112CV225926)*

Arthur A. Hartinger, Esq.  
Geoffrey Spellberg, Esq.  
Linda M. Ross, Esq.  
Jennifer L. Nock, Esq.  
Michael C. Hughes, Esq.  
MEYERS, NAVE, RIBACK, SILVER &  
WILSON  
555 12th Street, Suite 1500  
Oakland, CA 94607  
ahartinger@meyersnave.com  
jnock@meyersnave.com  
lross@meyersnave.com  
mhughes@meyersnave.com

*Attorneys for Defendants, THE CITY OF SAN  
JOSE AND DEBRA FIGONE*

1 John McBride, Esq.  
2 Christopher E. Platten, Esq.  
3 Mark S. Renner, Esq.  
4 WYLIE, McBRIDE, PLATTEN & RENNER  
5 2125 Canoas Garden Avenue, Suite 120  
6 San Jose, CA 95125  
7 jmcbride@wmpirlaw.com  
8 cplatten@wmpirlaw.com

9 *Attorneys for Plaintiffs/Petitioners, ROBERT*  
10 *SAPIEN, MARY McCARNEY, THANH HO,*  
11 *RANDY SEKANY AND KEN HEREDIA (Santa*  
12 *Clara Superior Court Case No. 112-CV-225928)*

13 AND

14 *Plaintiffs/Petitioners, JOHN MUKHAR, DALE*  
15 *DAPP, JAMES ATKINS, WILLIAM*  
16 *BUFFINGTON AND KIRK PENNINGTON (Santa*  
17 *Clara Superior Court Case No. 112-CV-226574)*

18 AND

19 *Plaintiffs/Petitioners, TERESA HARRIS, JON*  
20 *REGER, MOSES SERRANO (Santa Clara*  
21 *Superior Court Case No. 112-CV-226570)*

Harvey L. Leiderman, Esq.  
REED SMITH, LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94105  
hleiterman@reedsmith.com

*Attorneys for Defendant, CITY OF SAN JOSE,*  
*BOARD OF ADMINISTRATION FOR POLICE*  
*AND FIRE DEPARTMENT RETIREMENT*  
*PLAN OF CITY OF SAN JOSE (Santa Clara*  
*Superior Court Case No. 112CV225926)*

AND

*Necessary Party in Interest, THE BOARD OF*  
*ADMINISTRATION FOR THE 1961 SAN JOSE*  
*POLICE AND FIRE DEPARTMENT*  
*RETIREMENT PLAN (Santa Clara Superior*  
*Court Case No. 112CV225928)*

AND

*Necessary Party in Interest, THE BOARD OF*  
*ADMINISTRATION FOR THE 1975*  
*FEDERATED CITY EMPLOYEES'*  
*RETIREMENT PLAN (Santa Clara Superior*  
*Court Case Nos. 112CV226570 and*  
*112CV22574)*

AND

*Necessary Party in Interest, THE BOARD OF*  
*ADMINISTRATION FOR THE FEDERATED*  
*CITY EMPLOYEES RETIREMENT PLAN*  
*(Santa Clara Superior Court Case No.*  
*112CV227864)*

22 Stephen H. Silver, Esq.  
23 Richard A. Levine, Esq.  
24 Jacob A. Kalinski, Esq.  
25 SILVER, HADDEN, SILVER, WEXLER &  
26 LEVINE  
27 1428 Second Street, Suite 200  
28 Santa Monica, CA 90401-2367  
jkalinski@shslaborlaw.com  
shsilver@shslaborlaw.com  
rlevine@shslaborlaw.com

*Attorneys for Plaintiffs, SAN JOSE RETIRED*  
*EMPLOYEES ASSOCIATION, HOWARD E.*  
*FLEMING, DONALD S. MACRAE, FRANCES J.*  
*OLSON, GARY J. RICHERT and ROSALINDA*  
*NAVARRO (Santa Clara Superior Court Case No.*  
*112CV233660)*

meys have

DEC 08 2014

RECEIVED

135.023  
✓ K. Thomas  
P. McNulty

PRIORITY MAIL  
COMBIA PRICE

UNITED STATES POSTAGE  
EAGLE  
\$005.320  
C2 1P  
0000813545 DEC 04 2014  
MAILED FROM ZIP CODE 94607

BEESON, TAYER & BODINE  
ROSS HOUSE, SUITE 200  
483 NINTH STREET  
OAKLAND, CALIFORNIA 94607-4051

Arthur A. Hartinger, Esq.  
To: Geoffrey Spellberg, Esq.  
Linda M. Ross, Esq.  
Jennifer L. Nock, Esq.  
Michael C. Hughes, Esq.  
MEYERS, NAVE, RIBACK, SILVER &  
WILSON  
555 12th Street, Suite 1500  
Oakland, CA 94607

ADDRESS SERVICE REQUESTED